



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,595	09/05/2003	Bernd Christoph Lang	4398-254	7314

23117 7590 03/21/2006

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
----------	--------------

3743

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/655,595

Applicant(s)

LANG ET AL.

Examiner

Teena Mitchell

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-17, 19-35 and 43-64 is/are allowed.
- 6) ☒ Claim(s) 36-42, 65-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 36-42 and 65-67 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure does not provide support for the base portion surfaces having a generally trapezoidal surface. The added new limitation constitutes new matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 36-42 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang (DE 100,45183).

With respect to claim 36, Lang discloses a respiratory mask (Fig. 1) comprising a forehead support having an aperture and an otherwise entirely smooth surface facing a user in use of the mask; and a forehead pad comprising a base portion, wherein the base portion defines a first surface and a second surface opposite the first surface to contact a user's forehead; a support post, wherein the support post projects from the first surface; and a head adapted to connect the support post to the forehead support (Figs. 1-4). The difference between Lang and claim 36 is the generally trapezoidal surface. Based on Applicant's disclosure [00113] "...The base portion 408 can be of any shape..." it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the base portion surface generally trapezoidal.

With respect to claim 37, Lang discloses wherein the assembly further comprises at least one connector to connect adjacent base portions (Fig. 3).

With respect to claim 38, Lang discloses wherein each base portion is adapted to be disposed above an eyebrow of the user (Figs. 1-4).

With respect to claim 40, Lang discloses wherein at least two base portions and at least one connector are integrally formed with each other (Figs. 1-4).

With respect to claim 41, Lang discloses wherein at least one base portion and at least one connector are formed as one piece (Figs. 1-4).

With respect to claim 42, Lang discloses wherein the base portion defines a first surface, from which the support post projects (Figs. 1-4).

With respect to claim 65, Lang discloses a respiratory mask comprising: a forehead support; and a forehead pad comprising: a base portion, wherein the base portion further defines: a first surface, a second surface to contact a user's forehead: a support post, wherein the support post projects from the first surface and is adapted to connect to the forehead support; wherein the base portion is connected to the forehead support solely through the support post (Figs. 1-4; also note rejection of claim 36 above).

With respect to claim 66, Lang discloses wherein a surface of the forehead support that faces the forehead pad includes no protrusions (Figs. 1-4).

With respect to claim 67, Lang discloses a forehead pad comprising: a base portion, wherein the base portion further defines: a first surface, and a second surface to contact a user's forehead; a support post, wherein the support post projects from the first surface and is adapted to connect to the forehead support, wherein the second surface substantially evenly distributes force across the forehead pad without localized pressure points (Figs. 1-4; also note rejection of claim 36 above).

Allowable Subject Matter

Claims 1-17, 19-35 and 43-64 are allowable over the prior art of record.

Response to Arguments

Applicant's arguments filed 12/28/05 have been fully considered but they are not persuasive. Lang discloses the claimed limitation, note rejections above and applicant does not provide support for the added new claim limitations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

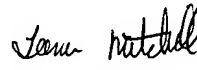
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teen Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Teena Mitchell
Primary Examiner
Art Unit 3743
March 20, 2006


TKM